

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA**

BAYER CORPORATION and)	
SUBSIDIARIES,)	
)	
Plaintiff and)	
Counterclaim Defendant,)	
)	
v.)	Civil Action No. 2:09-cv-00351-WLS
)	
UNITED STATES OF AMERICA,)	
)	
Defendant and)	
Counterclaim Plaintiff.)	

ANSWER AND COUNTERCLAIM

The defendant and counterclaim plaintiff, the United States of America, by and through its attorneys, answers and responds to the plaintiff's complaint, as follows:

FIRST DEFENSE

The plaintiff is not entitled to costs or attorney's fees.

SECOND DEFENSE

FOR ITS FURTHER ANSWER, the United States responds to the numbered paragraphs of the complaint as follows.

1. The United States admits that jurisdiction is conferred over this action pursuant to 28 U.S.C. § 1346(a)(1) and 26 U.S.C. § 7422, but denies that plaintiff is due a refund of any amount.
2. The United States admits the allegations of ¶ 2.
3. The United States admits the allegations of ¶ 3.
4. The United States admits the allegations of ¶ 4.

5. The United States admits the allegations of ¶ 5 insofar as it pertains to the years after December 31, 1991. Avers that the predecessor corporation filed under the name “Bayer U.S.A, Inc.,” with another employer identification number. The United States lacks sufficient knowledge or information to admit or deny the remaining allegations of ¶ 5.

6. The United States admits the allegations of ¶ 6.

7. The United States admits the allegations of the first sentence of ¶ 7. Avers that it lacks sufficient knowledge or information to admit or deny the remaining allegations of ¶ 7.

8. The United States lacks sufficient knowledge or information to admit or deny the allegations of ¶ 8.

9. The United States denies the allegations of ¶ 9.

10. The United States lacks sufficient knowledge or information to admit or deny the allegations of ¶ 10.

11. The United States admits the allegations of ¶ 11, but denies that plaintiff is due a refund of any amount.

12. The United States admits the allegations of ¶ 12.

13. The United States admits the allegations of ¶ 13, but denies that plaintiff is due a refund in any amount.

14. The United States denies that plaintiff is due a refund in any amount and lacks sufficient knowledge or information to admit or deny the remaining allegations of ¶ 14.

WHEREFORE, having responded fully to the allegations in the plaintiff’s complaint, the United States respectfully request that the Court

A. Deny plaintiff’s request for refund;

- B. Grant judgment to the United States; and
- C. Dismiss the complaint with prejudice.

COUNTERCLAIM

The defendant and counterclaim plaintiff, the United States of America, by and through its attorneys, asserts a counterclaim against Bayer Corporation & Subsidiaries, as follows:

15. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. § 7402.

16. Venue is proper in this district under 28 U.S.C. § 1396.

17. This counterclaim has been requested and authorized by the Chief Counsel for the Internal Revenue Service, a delegate of the Secretary of the Treasury of the United States, and is brought at the direction of the Attorney General of the United States, under 26 U.S.C. § 7401.

18. On September 9, 2009, a delegate of the Secretary of the Treasury of the United States, assessed against Bayer Corporation & Subsidiaries, unpaid Form 1120, U.S. corporation income tax, and statutory additions, in the amount of \$ 80,361,674.00 for the year 2006, arising out of the disallowance by the Internal Revenue Service of the credit for research expenses under § 41 of the Internal Revenue Code (26 U.S.C.) claimed by Bayer Corporation & Subsidiaries on its Form 1120 return for the year 2006.

19. As a result of the assessment made against Bayer Corporation & Subsidiaries described in paragraph 18, above, there remains due and owing to the United States from Bayer, as of September 9, 2009, the amount of \$ 80,361,674.00, plus statutory additions accruing thereon according to law from September 9, 2009.

20. Despite notice and demand for payment, Bayer Corporation & Subsidiaries has

failed, neglected, and /or refused to pay the amount of \$ 80,361,674.00, plus statutory additions accruing thereon according to law from September 9, 2009, as set forth in paragraph 19, above.

WHEREFORE, the counterclaimant, the United States of America, prays as follows:

D. That the Court order and adjudge that plaintiff, Bayer Corporation & Subsidiaries, is indebted to the United States for unpaid U.S. corporation income tax for the year 2006, as of September 9, 2009, in the amount of \$ 80,361,674.00, plus statutory additions accruing thereon according to law from September 9, 2009, and continuing until paid;

E. That the Court award to the United States its costs in prosecuting this action; and

F. That the Court award such other and further relief as may be deemed just and proper under the circumstances.

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Date: September 14, 2009.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

By: /s/ Jennifer Andrade

JENNIFER ANDRADE (PA ID # 94685)
Assistant United States Attorney

/s/ Yonatan Gelblum

JOHN J. LoCURTO
YONATAN GELBLUM
Trial Attorneys, Tax Division
U.S. Department of Justice
P.O. Box 227
Ben Franklin Station
Washington, DC 20044
Telephone: (202) 305-3136
Yonatan.Gelblum@usdoj.gov
Attorneys for United States

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UNITED STATES OF AMERICA,)	
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Defendant and)	
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CERTIFICATE OF SERVICE

IT IS CERTIFIED that the foregoing ANSWER AND COUNTERCLAIM was caused to be served on the following on the 14th day of September, 2009, in accordance with the Court's ECF procedures:

Clifton B. Cates, III
IVINS, PHILLIPS & BARKER CHARTERED
1700 Pennsylvania Avenue, N.W.
Sixth Floor
Washington, D.C. 20006
Telephone: (626) 796-7018
Facsimile: (626) 449-6120
Email: ccates@ipbtax.com

Jeffrey E. Moeller
IVINS, PHILLIPS & BARKER CHARTERED
1700 Pennsylvania Avenue, N.W.
Sixth Floor
Washington, D.C. 20006
Telephone: (202) 393-7600
Facsimile: (202) 393-7601
Email: jmoeller@ipbtax.com

John M. McIntyre
REED SMITH LLP
435 Sixth Avenue
Pittsburgh, PA 15219
Telephone: (412) 288-3822
Facsimile: (412) 288-3063
Email: jmcintyre@reedsmith.com

/s/ Yonatan Gelblum

YONATAN GELBLUM